

1 ownership, entities holding cognizable ownership interests  
2 in at least two minority-controlled radio and television  
3 stations will be allowed to increase their station  
4 portfolios to a maximum of 14 stations.

5 Applying this policy to the audience reach  
6 system adopted herein for television, a single entity  
7 having cognizable ownership interests in minority-  
8 controlled television stations would be allowed to reach a  
9 maximum of 30% of the national audience.

10 For the purpose of these rules, minority control  
11 shall be defined as having a greater than 50% minority  
12 ownership interest in a broadcast facility.

13 Finally, the Bureau finds that the sunset  
14 provision contained in the Report and Order is not  
15 necessary to achieve the Commission's policy objectives  
16 and should be eliminated. We believe that these  
17 modifications to the Report and Order are appropriate,  
18 allowing the public to obtain the benefits of increased  
19 group ownership while minimizing the potential for  
20 disruptive restructuring of the industry. We therefore  
21 recommend that the Commission adopt the following  
22 Memorandum Opinion and Order.

23 Mr. McKinney: Mr. Chairman, I understand  
24 there's concern that's been expressed regarding our  
25 actions today in one aspect of the minority incentive

1 area, and the previous ruling in attribution regarding a  
2 single majority stockholder who holds 51% of a broadcast  
3 property. You, Mr. Chairman, have instructed us to  
4 prepare, for consideration of the Commission, an NPRM on  
5 that single aspect of the attribution rules. We'll bring  
6 that back to you very shortly, and a footnote will be  
7 added to the item to point that out.

8 Chairman Fowler: Yes, would you -- I'm sorry,  
9 would you repeat that last part again. I didn't --

10 Mr. McKinney: And a footnote will be added to  
11 the item to point that out.

12 Chairman Fowler: That we've instructed you all  
13 to --

14 Mr. McKinney: That you've instructed us to  
15 bring forward the NPRM on that one aspect.

16 Chairman Fowler: Right. That's correct. Now,  
17 are there comments or questions on this?

18 Commissioner Quello: Yes. Again, I think this  
19 is a good, reasoned approach to another contentious  
20 problem. I do think, though, that in footnote 44 we  
21 should take some kind of cognizance of the fact that  
22 proposals introduced by Senator Wilson and Congressman  
23 Leland were considered in our overall decision. I think  
24 we ought to just make -- let people know that that's the  
25 case. It is a fact, I think we have put it on record by

1 saying that. I think it's -- if the Commission expressly  
2 notes this, that we did consider these legislative  
3 proposals in our reconsideration, it puts it all out, out  
4 in the open. I think it would do some good.

5 Mr. McKinney: We do have edits along those  
6 lines, and we will see that it's added at an appropriate  
7 point.

8 Chairman Fowler: Thank you, Commissioner  
9 Quello. Other comments or questions on this item?  
10 Commissioner Dawson.

11 Commissioner Dawson: Mr. Chairman, I'm sure  
12 that each of us can find some things that we're not  
13 particularly wild about in this item. I would very much  
14 like to commend you on your leadership in arriving at this  
15 consensus. I, in particular, have some very real  
16 concerns about the continued restrictions on radio  
17 ownership, lack of sunset and the minority provisions and  
18 I happen to think that encouraging minority ownership is a  
19 different question than the concerns that led me to feel  
20 so strongly about this issue.

21 But I do think that this document -- while much  
22 of the rhetoric in the document in terms of the rightness  
23 of the original decision, I obviously don't support, I  
24 certainly do support the bottom line and support the  
25 efforts and the leadership that -- not only that you have

1 made, Mr. Chairman, but your whole staff. I think of  
2 Raymond Strassburger and Tom Hurwitz. I think they have  
3 done an extraordinary job of presenting our viewpoint, and  
4 so with those caveats, and obviously with an appreciation  
5 for your being a forger of a strong consensus, I will  
6 support the item.

7 [At this point there is a disruption by  
8 demonstrators - Audience is yelling "No Access!" The  
9 Chairman replies: "If that's what you want, that's what  
10 you'll get." Laughter by panel follows.]

11 Chairman Fowler: All right, now who has  
12 comments or questions here on this item?

13 Commissioner Quello: I think we've done it.

14 Chairman Fowler: Okay. I wanted -- you took the  
15 words out of my mouth.

16 Dennis Patrick: Mr. Chairman.

17 Chairman Fowler: Yes.

18 Dennis Patrick: I have some comments. Did you  
19 have something?

20 Chairman Fowler: No, please proceed.

21 Commissioner Patrick: Okay. Mr. Chairman, for  
22 the most part, as you know, Mr. Chairman, I am very  
23 supportive of this item. On reconsideration, the weight  
24 of the comments that we received suggested that the  
25 Commission should adopt an even more cautious approach to

1 our relaxation of the multiple ownership rules. And I  
2 believe that the Commission's decision today adequately  
3 accommodates the gist of those comments and the thrust of  
4 those comments. And for that reason, I think it is  
5 appropriate in large measure.

6 Mr. Chairman, I have to dissent in part,  
7 however, to that portion of the decision which sets two  
8 different national ownership rules based upon race. I am  
9 a strong supporter of our efforts to foster minority  
10 ownership. I believe that our comparative hearing  
11 process, for instance, wherein we grant minority  
12 enhancements, is a model in that regard. I am unsure,  
13 however, that the national ownership rules are the proper  
14 vehicle to attempt to structure incentives for minority  
15 ownership.

16 Our national ownership rules are concerned with  
17 ensuring that no single individual controls access to too  
18 large a segment of the American public. Surely, this is  
19 not an issue which turns upon race. If the public  
20 interest is threatened by concentrating ownership of 14  
21 stations in a single owner, which is what we find here  
22 today, how is it that that threat is obviated by the race  
23 of the owner?

24 But even assuming that our national ownership  
25 rule should be used to facilitate minority ownership, I

1 must still dissent, in part, to the majority's plan, the  
2 vehicle, the mechanism that we choose today. I believe  
3 that this Commission, like any body of the government,  
4 should use racial classifications in granting or denying  
5 civil rights only in a manner which bears a direct and  
6 necessary relationship to the interests at issue here, by  
7 promoting diversity of viewpoints.

8 Under the majority's plan, the nexus between the  
9 use of racial classifications and the promotion of  
10 diversity interests is just too tenuous. Under the  
11 majority's plan, the right to purchase broadcast stations  
12 over the established ceiling turns upon the race of the  
13 proposed owners alone. No further showing is required  
14 with respect to how these new owners may contribute to the  
15 issue, the compelling state interest at issue here --  
16 diversity. No concern is given as to whether the 51%  
17 minority owners will exert any influence whatsoever on the  
18 station's programming or will have any control at all.

19 I believe for these reasons, Mr. Chairman, that  
20 the Commission would be better advised to proceed on a  
21 case-by-case waiver basis up to a 14-30 ceiling as is  
22 suggested in the majority's opinion. This would be a  
23 waiver process wherein the Commission would be free to  
24 focus upon not just race -- race is certainly a very  
25 important factor -- but our concern here, the key concern,

1 not the color of skin, but diversity.

2 In fact, Mr. Chairman, I think such a system  
3 would be more effective in terms of facilitating minority  
4 ownership for a number of reasons, one of which is that I  
5 would suggest that we have less rigid requirements in  
6 terms of ownership, for instance. Fifty one percent, I am  
7 afraid, is a requirement that may preclude or defeat the  
8 effectiveness of this program. I will be issuing a  
9 separate statement in which I will go into that a little  
10 bit further. Thank you for your time, Mr. Chairman.

11 Chairman Fowler: Thank you very much,  
12 Commissioner Patrick, for those comments. Are there other  
13 comments here? Commissioner Rivera.

14 Commissioner Rivera: Yes, thank you, Mr.  
15 Chairman. I guess I disagree with you, Commissioner  
16 Patrick. I think that while our multiple, our minority  
17 ownership policy was certainly developed well after 1953,  
18 I think that there are -- those policies are rooted in the  
19 same diversity considerations as are our national multiple  
20 ownership rules -- diversification in broadcast ownership  
21 and content. I think it is, therefore, altogether fitting  
22 that in this first revision of the multiple ownership  
23 rules since 1953 that the Commission incorporate its  
24 minority ownership objectives into the new rule.

25 Although our rule, the multiple ownership rule,

1 is certainly not the primary vehicle for promoting  
2 minority ownership, the two objectives I think are  
3 interrelated, and therefore I think it's most appropriate  
4 that we do have the minority ownership incentive in this  
5 particular rule. And I certainly am behind the item, Mr.  
6 Chairman. I, too, would like to commend you for your  
7 leadership in forging a consensus here, and I will be  
8 voting for the item. I will have a separate statement.

9 Chairman Fowler: Thank you, Commissioner  
10 Rivera. Are there any other comments on this item? Well,  
11 I think everything has been said that could be said. I  
12 will just thank -- first of all, you took the words out of  
13 my mouth, Commissioner Dawson, because I had written down  
14 two names here, Tom Hurwitz and Ray Strassburger, without  
15 whose help we could not have fashioned and hammered out  
16 this consensus. I want to thank Jim McKinney and the Mass  
17 Media Bureau for doing an excellent job on this item on a  
18 very compressed time schedule. You're to be congratulated  
19 as well.

20 Mr. McKinney: Laurel Bergold and Mike Metzger,  
21 as well as David Donovan, sir.

22 Chairman Fowler: Well, I am delighted you've  
23 recognized them as well. I do want to make it clear that  
24 as Commissioner Dawson said, this is certainly not a  
25 perfect package from my standpoint, as I suspect from



1 others. I do agree with Commissioner Patrick's comments.  
2 I think he has it exactly right. My opinions on that are  
3 well documented and have been on the record since the  
4 lottery, which was enacted some time ago by this agency  
5 pursuant to legislation.

6 Nonetheless, I will concur on that aspect in the  
7 name of preserving the greater whole or the greater good  
8 that I think derives from this action of the Commission.  
9 If there are no other comments or questions on this, all  
10 in favor say "Aye."

11 Everyone: "Aye"

12 Chairman Fowler: Opposed, no -- the Aye's have  
13 it -- so ordered.

14 Mr. McKinney: We would request editorial  
15 privileges.

16 Chairman Fowler: All right. Thank you, sir.  
17 Granted.

18 [Whereupon, the proceedings concluded.]  
19  
20  
21  
22  
23  
24  
25

I, BARBARA MCGUIRE, certify that to the best of my knowledge and belief the foregoing transcript is a full and accurate transcription of the audio recording, produced from a videotape, provided to Alderson Reporting Company by Fisher Wayland Cooper Leader & Zaragoza, L.L.P.

6.12.96

Date

B. McGuire

Signature



Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

FCC 85-303

35854

In the Matter of )  
 )  
Reexamination of the "Single Majority ) MM Docket No. 85-192  
Stockholder" and "Minority Incentive" )  
Provisions of Section 73.3555 of the )  
Commission's Rules and Regulations )

NOTICE OF PROPOSED RULE MAKING

Adopted: June 7, 1985

Released: July 1, 1985

By the Commission: Commissioner Rivera issuing a separate statement;  
Commissioner Patrick concurring in the result.

1. By this Notice of Proposed Rule Making the Commission, acting on its own motion, 1/ seeks comments concerning the interaction between the "single majority stockholder" exception to our ownership attribution standards 2/ and the "minority incentive" provisions added to our national multiple ownership rules 3/ pursuant to our recent order in the "twelve station" proceeding. 4/ Specifically, we wish to determine whether and to what extent these two provisions, as now written, may operate at cross-purposes and what changes to such provisions might be warranted to remedy any conflict.

2. Through its attribution policies, the Commission evaluates whether a specific type of interest conveys to the holder the ability to materially influence or control the business affairs of our licensees and, as a consequence, what ownership interests are counted in the application of the media multiple ownership rules. One component of these attribution policies is the "single majority stockholder" exception concerning corporations in which a single person owns more than fifty percent of the voting stock. The exception exempts from attribution the ownership interests of all non-majority

1/ 47 C.F.R. §1.411 (1984).

2/ See 47 C.F.R. §73.3555, NOTE 2(b); §76.501, NOTE 2(b) [1984]; and Report and Order in MM Docket No. 83-46, 97 FCC 2d 997, 1008-09 (1984), reconsid. granted in part, FCC 85-252 (released June 24, 1985).

3/ Memorandum Opinion and Order in Gen. Docket No. 83-1009, FCC 84-638 (released February 1, 1985) at Appendix A [to be codified at 47 C.F.R. §73.3555(d)].

4/ Memorandum Opinion and Order in Gen. Docket No. 83-1009, supra n.3.

stockholders, 5/ regardless of whether or not such stockholder's ownership interest would otherwise be cognizable. The rationale underlying this exception is that the interest of the single majority stockholder is so great that "the [non-majority] interest holders, even acting collaboratively, would be unable to direct the affairs or activities of the licensee on the basis of their shareholdings." 6/

3. Subsequent to the adoption of the "single majority stockholder" exception to the attribution policies, the Commission, announced its decision on reconsideration in the multiple ownership proceeding. In reconsidering its decision to relax the "seven station" rule and to permit an individual or single entity to hold a cognizable interest in up to twelve stations in each broadcast service, the Commission decided to include certain "minority incentives" in the new multiple ownership rules. 7/ Specifically, in order to foster investment in minority-controlled broadcasting companies, we determined to permit group owners otherwise subject to the twelve station limit to:

utilize a maximum numerical cap of 14 stations provided that at least two of the stations in which they hold cognizable interests are minority controlled. Group owners having a cognizable interest in at least one minority controlled television or radio station may utilize a maximum numerical cap of 13 stations. 8/

4. The Commission also created a comparable incentive with respect to the maximum national audience reach limitation on television station ownership added to the multiple ownership rules on reconsideration in the "twelve station" proceeding. Thus, while a person would generally be restricted from owning cognizable interests in television stations which, in the aggregate, could reach more than 25 percent of the national audience, this limitation was increased by five percent as long as any interest in excess of 25 percent can be directly attributed to minority-controlled

5/ In order to avoid confusion, we shall use the term "minority" herein to refer to a member or members of an identified minority group, such as Hispanics, and the term "non-majority" to refer to interest holders possessing less than a 50% ownership interest.

6/ Report and Order in MM Docket No. 83-46, supra n.2 at 1008-09.

7/ Report and Order in Gen. Docket No. 83-1009, FCC 84-350 (released August 3, 1984), reconsid. granted in part, FCC 84-638 (released February 1, 1985), appeal docketed sub nom. National Association of Black Owned Broadcasters v. FCC, No. 83-1139 (D.C. Cir. filed March 4, 1985).

8/ Memorandum Opinion and Order in Gen. Docket No. 83-1009, supra n.3 at para. 45.

stations. 9/ For purposes of these provisions, "minority-controlled" broadcast stations are defined as those in which more than 50 percent of the equity interest is owned in the aggregate by persons who are members of a minority group. 10/

5. Our intention, of course, in permitting increased levels of multiple ownership only where minority-controlled stations are involved is to encourage investment in and support for these stations, thereby advancing our broad policy objective of promoting minority ownership of broadcasting facilities. 11/ It has been suggested, however, that in practice the availability of the "single majority stockholder" exception may potentially operate to dilute the effectiveness of the minority incentives by significantly reducing the number of cases where they might be attractive for use in the financing of a broadcast enterprise. 12/ Our concern in this regard is heightened by the fact that, in some respects, the "single majority stockholder" exception is broader than the "minority incentive" provisions and may, therefore, be more attractive to investors. For example, because the exception operates as a total exemption from attribution, it permits a person investing in companies that have a single majority stockholder to obtain significant interests in broadcast stations without regard to any numerical or audience reach limitations. Moreover, the scope of the exception extends to all of the media multiple ownership rules; it is not limited to the national ownership rules adopted in the "twelve station" proceeding. Finally, in utilizing the "single majority stockholder" exception, there are no restrictions on the types of persons holding the majority interest.

6. On the other hand, several characteristics of the "single majority stockholder" exception restrict its usefulness in comparison to the "minority incentive" provisions for certain purposes and under various conditions. In this regard, we note that there are certain types of investments which may qualify for preferential treatment under the "minority incentive" rule but fail to meet the criteria for an absolute exclusion from attribution under the "single majority stockholder" rule. For example, a person seeking to invest in a non-corporate business entity cannot take

9/ Id. at App. A [to be codified at 47 C.F.R. §73.3555(d)(2)]. Minority group members are persons who are Black, Hispanic, American Indian, Alaska Native, Asian and Pacific Islander. Id. at App. A [to be codified at 47 C.F.R. §73.3555(d)(3)(D)].

10/ Id. at App. A [to be codified at 47 C.F.R. §73.3555(d)(3)(C)].

11/ See, e.g., Statement of Policy on Minority Ownership of Broadcasting Facilities, 68 FCC 2d 979 (1978); Policy Statement and Notice of Proposed Rule Making in Gen. Docket No. 82-797, 92 FCC 2d 849 (1982).

12/ We recognized this potential conflict at the time we adopted the minority incentive provisions in the "twelve station" proceeding. As a result, we specifically instructed the staff to prepare this Notice of Proposed Rule Making to examine the relationship between the minority ownership incentives and the "single majority stockholder" exception. See Report and Order in Gen. Docket No. 83-1009, supra n.6 at n.60.

advantage of the "single majority stockholder" exception because that exclusion, by its express terms, applies only to corporate ownership interests. In addition, the "single majority stockholder" exception is limited to situations in which more than 50 percent of the voting stock is owned by a single person. Under the "minority incentive" policy, in contrast, ownership interests of minority group owners are aggregated in computing control and, consequently, there is no requirement that any one person possess an equity interest in the business that exceeds 50 percent.

7. More importantly, the "single majority stockholder" exception is limited to ownership interests. As a consequence, our rules attribute the interest of a non-majority stockholder who would otherwise qualify for an exemption under the "single majority stockholder" rule when that stockholder occupies a position within the corporate structure that is cognizable independent of any equity holdings. For example, notwithstanding the existence of the "single majority stockholder" exception, the interest of a person who both holds a non-majority ownership interest in a company with a single majority stockholder and occupies the position of a corporate officer or director is cognizable. In contrast, the relaxed numerical and audience reach caps of the "minority incentive" rules are available to a person investing in minority-controlled enterprises even if he or she is also a corporate officer or director. Therefore, relative to use of the "single majority stockholder" rule, an investment in a minority-controlled company may be attractive to persons occupying -- or desiring to retain the option to occupy -- cognizable corporate positions. This aspect of the "minority incentive" provisions may constitute a substantial advantage over the "single majority stockholder" approach in the view of significant investors because it affords them a means short of majority stock control by which to ensure the continued viability of their investment.

8. To the extent that an investment meets the criteria for the less restrictive limitations contained in the "minority incentive" program but does not qualify for a "single majority stockholder" exception, the policy underlying the adoption of specific minority incentives in the "twelve station" proceeding may be effectuated without any alteration of our existing rules. Given the foregoing considerations, we are not prepared at this time to make a determination that the "single majority stockholder" exception, as applied to the national broadcast media multiple ownership rules, appreciably undercuts our "minority incentive" provisions. We believe it is appropriate, however, to seek comments concerning this possibility.

9. In evaluating the interrelationship of these two provisions and in fashioning possible remedies for any real conflict between them, several additional considerations should be noted. First, traditionally it has not been the purpose of the attribution rules to facilitate minority ownership of broadcast facilities. Rather, the purpose of these rules is to establish a regulatory line of demarcation between those interests which could confer upon their owner the ability to materially influence or control the licensee's editorial decisions and consequently should be deemed cognizable under the media multiple ownership rules and those interests which are non-influential in nature and therefore are appropriately exempt from attribution. The adoption of the "single majority stockholder" exception reflects a neutral

determination by the Commission that the stockholders that qualify for this exception do not in fact possess an influential ownership interest which should be deemed cognizable under the media multiple ownership rules. 13/ There is nothing either in our experience with this exception or in our decision to revise the national multiple ownership rules in the "twelve station" proceeding which would lead us to question this determination. To the extent, therefore, that narrowing or eliminating the "single majority stockholder" exception suggests itself as a solution in this proceeding, such an approach would result in the attribution of non-influential ownership interests and would arguably be at odds with the objectives underlying the attribution rules. 14/

10. Furthermore, we note that this proceeding only addresses the "single majority stockholder" exception as it applies to the rules adopted in the "twelve station" proceeding and, consequently, any changes to that attribution standard which we might adopt in this proceeding would of necessity result in disparate attribution standards for the national and local media multiple ownership rules. 15/ In our Report and Order in the attribution proceeding, we determined, as a policy matter, that the same attribution standards should be applicable to all media multiple ownership rules. We explained that these rules:

are designed to prevent any party from influencing the broadcasting practice of more than a predetermined number of outlets in various geographic configurations. The attribution standards, in turn, are designed to measure what ownership interests will confer that

13/ Report and Order in MM Docket No. 83-46, 97 FCC 2d at 1008-09.

14/ Any limitation on the scope or availability of the "single majority stockholder" exception imposed as a result of this proceeding would be prospective only. The interests of investors relying on the exception prior to any possible modification thereof would remain noncognizable for purposes of our multiple ownership rules.

15/ Moreover, we have indicated that the local media ownership rules are the primary vehicle by which we address the concerns of diversity and economic concentration in an ownership context. See, e.g., Report and Order in MM Docket No. 84-19, 96 FCC 2d 578 reconsid. denied, FCC 85-225 (released May 8, 1985), appeal docketed sub nom. National Association for Better Broadcasting v. FCC, No. 84-1274 (D.C. Cir. filed June 29, 1984) at paras. 20-22. In fact, although we have retained a national broadcast multiple ownership rule to avoid the possibility of an abrupt and disruptive restructuring of the broadcasting industry, we have concluded, as a policy matter, that there is no need to retain a presumptive national multiple ownership rule. See Memorandum Opinion and Order in Gen. Docket No 83-1009, supra n.3. at para. 50. Yet, if we determine to eliminate the "single majority stockholder" rule as applied to the national multiple ownership rule, we will have the arguably anomalous situation of less stringent attribution standards for the vitally important local multiple ownership rules than are applied to their less important national counterpart.



amount of influence or control which must be limited. The determination that a certain stock interest or other position might confer such influence or control is equally valid regardless of the particular context of rule in which it is applied. 16/

11. By the institution of this rule making, we invite parties to comment on all matters raised in this Notice. We specifically request persons, however, to provide their views on the following issues:

(1) Whether the "single majority stockholder" rule, in operation, substantially affects the efficacy of the "minority incentives" established in the "twelve station" proceeding; and

(2) If the availability of the "single majority stockholder" exception does in fact appreciably undermine effective implementation of the current "minority incentive" provisions, what changes to either or both of these provisions are advisable. 17/

12. Pursuant to applicable procedures set forth in Sections 1.415 and 1.419 of the Commission's Rules, interested parties may file comments on or before August 7, 1985, and reply comments on or before

August 22, 1985. All relevant and timely comments will be considered by the Commission before any final action is taken in this proceeding. To file formally in this proceeding, participants must file an

16/ Report and Order in MM Docket No. 83-46, 97 FCC 2d at 1032-33.

17/ In addressing this issue, we invite parties to comment upon the factors which we should consider in balancing our objective of effectively advancing our minority ownership policies against our interest in maintaining rational and uniform attribution criteria, and the relative weight we should assign to each factor. In striking this balance, commenters should bear in mind that we do not consider the multiple ownership rules to comprise the primary means by which the Commission undertakes to further its minority ownership objectives. As we stated in adopting the "minority incentive" provisions:

In the Report and Order, we observed that the national multiple ownership rules were not primarily intended to function as a vehicle for promoting minority ownership in broadcasting. In this regard, we noted that the Commission has instituted various policies such as tax certificates, distress sale benefits and lottery preferences to promote minority ownership in communications. We continue to believe that these policies, as opposed to our multiple ownership rules, should serve as the primary mechanisms to promote minority ownership in television and radio broadcasting.

Memorandum Opinion and Order in Gen. Docket No. 83-1009, supra n.3 at para. 45 [footnote omitted].

original and five copies of all comments, reply comments, and any supporting documents. If participants want each Commissioner to receive a personal copy of their pleadings, an original plus nine copies must be filed. Comments and reply comments should be sent to Office of the Secretary, Federal Communications Commission, Washington, D.C. 20554. Comments and reply comments will be available for public inspection during regular business hours in the Dockets Reference Room (Room 239) of the Federal Communications Commission, 1919 M Street, N.W., Washington, D.C. 20554.

13. For purposes of this non-restricted notice and comment rule making proceeding, members of the public are advised that ex parte contacts are permitted from the time the Commission adopts a notice of proposed rule making until the time a public notice is issued stating that a substantive disposition of the matter is to be considered at a forthcoming meeting. In general, an ex parte presentation is any written or oral communication (other than formal written comments/pleadings and formal oral argument) between a person outside the Commission and a Commissioner or a member of the Commission's staff which addresses the merits of the proceeding. Any person who submits a written ex parte presentation must serve a copy of that presentation on the Commission's Secretary for inclusion in the public file. Any person who makes an oral ex parte presentation addressing matters not fully covered in any previously-filed written pleading in the proceeding must prepare a written summary of that presentation; on the day of the oral presentation, that written summary must be served on the Commission's Secretary for inclusion in the public file, with a copy to the Commission official receiving the oral presentation. Each ex parte presentation described above must state on its face that the Secretary has been served, and must state by docket number the proceeding to which it relates. See generally, Section 1.1231 of the Commission's rules. 47 C.F.R. §1.1231.

14. As prescribed by the Regulatory Flexibility Act, 18/ an initial regulatory flexibility analysis ("IRFA"), set forth in the attached Appendix, outlines the expected impact of the proposals described in this Notice on small entities. We invite parties to this proceeding to submit written comments on the IRFA. These comments are to be filed in accordance with the same filing deadlines as the comments on the substantive aspects of this Notice. A party may file comments on the IRFA and the other matters raised by the Notice in the same document, but any person availing himself or herself of this option must place the IRFA response under a separate heading. The Secretary shall cause a copy of this Notice, including the IRFA, to be sent to the Chief Counsel for Advocacy of the Small Business Administration in accordance with Section 603(a) of the Regulatory Flexibility Act. 19/

15. The proposal contained herein has been analyzed with respect to the Paperwork Reduction Act of 1980 and found to impose new or modified requirements or burdens upon the public. Implementation of any new or modified requirement or burden will be subject to approval by the Office of Management and Budget as prescribed by the Act.

18/ 5 U.S.C. §601 et seq. (1982).

19/ 5 U.S.C. §603(a) (1982).

16. Authority for this proposed rule making is contained in Sections 1, 4(i) and (j), 303 and 403 of the Communications Act of 1934, as amended.

17. For further information concerning this proceeding, contact Laurel R. Bergold, Mass Media Bureau, (202) 632-7792

FEDERAL COMMUNICATIONS COMMISSION

William J. Tricarico  
Secretary

## APPENDIX

Initial Regulatory Flexibility Analysis

1. Reason that Action Is Contemplated. The Commission is concerned that the existence of the "single majority stockholder" exception in the attribution rules (47 C.F.R. §73.3555) may have the potential to dilute the specific incentives designed to facilitate the minority ownership of broadcast facilities adopted in Memorandum Opinion and Order in Gen. Docket No. 83-1009, FCC 83-175 (released February 1, 1985). As a consequence, the Commission deems it appropriate to explore the interaction between these "minority incentives" and the "single majority stockholder" exception.

2. Objectives of the Proposed Rule and the Legal Basis Therefor. The dual objectives in this proceeding are to assure the effective implementation of the minority incentive program adopted in Gen. Docket No. 83-1009 while maintaining a viable mechanism for the attribution of interests in the application of the media multiple ownership rules. The legal basis for the institution of this rule making is contained in Sections 1, 4(i) and 4(j), 303, and 403 of the Communications Act of 1934, as amended.

3. Description, Potential Impact and Number of Small Entities Affected. The rule changes considered in this rule making could modify in one respect the attribution standards governing broadcast licensees and those holding significant interests in such licensees as these standards are applied to the national broadcast multiple ownership rules. In addition, they could alter the minority incentives to the national multiple ownership rule adopted in Gen. Docket No. 83-1009. Many of the current and prospective minority-controlled broadcast licensees are small entities. The minority incentive program facilitates investment in minority-controlled small businesses. To the extent that the viability of the minority incentive program is enhanced as a result of any rule changes adopted in this proceeding, minority-controlled small entities will have increased opportunities for investment capital which, in turn, will enhance their financial viability.

4. Recording, Recordkeeping and Other Compliance Requirements. To the extent that the rules adopted in this proceeding restrict or eliminate the "single majority stockholder" exception, the reporting burden of those entities no longer exempt from attribution would increase thereby creating a corresponding increase in the reports filed with the Commission.

5. Federal Rules which Overlap, Duplicate or Conflict with This Proposal. None.

6. Any Significant Alternatives Minimizing Impact on Small Entities and Consistent with the Stated Objectives. None.

June 7, 1985

**SEPARATE STATEMENT  
OF  
COMMISSIONER HENRY M. RIVERA**

**RE: Notice of Proposed Rulemaking Reexamining Single Majority  
Stockholder and Minority Incentive Provisions of Rule 73.3555**

I am pleased that the Commission has begun this rulemaking. The minority ownership incentive adopted by the Commission's 12 station reconsideration decision <sup>1/</sup> can give a much-needed boost to the flagging involvement of minorities in broadcasting. That was certainly our intent in adopting the incentive (as well as the intent of the House and Senate legislative proposals on which the December 1984 reconsideration was based). As this Notice of Proposed Rulemaking explains, however, our attribution rules -- specifically, the single majority stockholder provision -- may indirectly undermine or defeat this minority incentive. To avoid taking away with the attribution rules what the Commission intended to give with the 12 station reconsideration order, it is essential that we examine the interplay of these rules. <sup>2/</sup>

The Notice has described the potential conflict between these rules. Both provisions relieve holders of 49 percent interests in broadcast licenses from our multiple ownership rules. Unlike the minority ownership incentive, however, the single majority stockholder rule does not limit who may hold the remaining 51 percent interest to minority group members. In addition, the single majority stockholder rule can be used to avoid any broadcast multiple ownership restriction and to acquire large interests in an unlimited number of properties, while the minority incentive applies only to the 12 station rule, and only allows parties to acquire two stations or five percent viewer penetration more than the limits contained in that rule. The minority incentive does have some advantages over the single majority stockholder rule -- for example, it exempts officers and directors from attribution where its standards are otherwise met. Nevertheless, the relief provided by the single majority stockholder rule to broadcast investors is significant and, in some ways, far superior to that offered by the minority ownership provision. Consequently, there is a

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<sup>1/</sup> Memorandum Opinion and Order in General Docket No. 83-1009, FCC 84-638 (released Feb. 1, 1985).

<sup>2/</sup> See id. at note 60 and Separate Statement of Commissioner Henry M. Rivera Concurring in Part, Dissenting in Part, at nn. 17-19 and accompanying text.

substantial question as to whether the minority ownership incentive will provide the positive inducement the Commission intended unless one or both of these rules is modified.

If the comments confirm these tentative views, the Commission has a number of options for remedial action. Deleting the single majority stockholder rule is the most obvious solution. The provision was adopted by the Commission on its own motion, with only a cursory rationale.<sup>3/</sup> It is far from integral to the new attribution scheme adopted last year.<sup>4/</sup> Its repeal would be a small price to pay for preserving the integrity and promise of our new minority ownership initiative. Alternatively, it may be possible to revise the minority incentive to make it more attractive to those seeking relief from our multiple ownership rules. Whatever the proper course, I am satisfied that this proceeding gives us the necessary vehicle for corrective action.

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<sup>3/</sup> Attribution of Ownership Interests, 97 FCC 2d 997, 1008-09 (1984).

<sup>4/</sup> See *id.*



# UNITED STATES STATUTES AT LARGE

CONTAINING THE

LAWS AND CONCURRENT RESOLUTIONS  
ENACTED DURING THE FIRST SESSION OF THE  
NINETY-SEVENTH CONGRESS  
OF THE UNITED STATES OF AMERICA

1981

AND

PROCLAMATIONS

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Public Law 97-35  
97th Congress

## An Act

To provide for reconciliation pursuant to section 301 of the first concurrent resolution on the budget for the fiscal year 1982.

Aug. 13, 1981  
[H.R. 3982]

## SHORT TITLE

SECTION 1. This Act may be cited as the "Omnibus Budget Reconciliation Act of 1981".

Omnibus Budget  
Reconciliation  
Act of 1981.

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## PURPOSE

SEC. 2. It is the purpose of this Act to implement the recommendations which were made by specified committees of the House of Representatives and the Senate pursuant to directions contained in part A of title III of the first concurrent resolution on the budget for the fiscal year 1982 (H. Con. Res. 115, 97th Congress), and pursuant to the reconciliation requirements which were imposed by such concurrent resolution as provided in section 310 of the Congressional Budget Act of 1974.

31 USC 1331.